

Pensions: what's new this week

Welcome to your weekly update from the Allen & Overy Pensions team, bringing you up to speed on all the latest legal and regulatory developments in the world of occupational pensions.

Opposite-sex civil partnerships: changes required? | TPR updates DB-DC transfers/conversions guidance | BA case: test for approving settlement by trustees | ICO guidance on special category data | Employment tribunal guidance on pension loss

Opposite-sex civil partnerships: changes required?

New [regulations](#) to enable opposite-sex civil partnerships come into force on 2 December 2019. The regulations amend the Civil Partnership Act 2004 and also make consequential changes to pensions legislation (including for public service pension schemes).

Trustees of private sector schemes should note that the regulations do not change the statutory rule that a surviving civil partner's entitlement is limited to 50% of the GMP, excluding any pre-1988 service. This means that a surviving female in an opposite-sex civil partnership would not have the same statutory entitlement as a surviving widow in an opposite-sex marriage, who is entitled to 50% of the full GMP without the service exclusion. The government has taken a [different approach](#) in relation to public sector schemes, as part of its application of the ruling in *Walker v Innospec* earlier this year. However, it has chosen not to legislate for private sector schemes in this respect, on the basis that they are individually responsible for ensuring that they are compliant with the judgment.

The first opposite-sex civil partnerships are expected shortly, so trustees should seek advice on any changes that need to be made to their scheme rules and booklets.

TPR updates DB-DC transfers/conversions guidance

The Pensions Regulator (TPR) has updated its [guidance](#) on DB-DC transfers and conversions to refer to the upcoming changes to the Financial Conduct Authority's Financial Services Register (see [WNTW](#), 18 March 2019). Many individual advisers will no longer appear on the Register; from December 2019, trustees should continue to check the Register for details of firms, but will need to contact firms to confirm that an individual works for that firm, or to check an appropriate third-party directory. A new FCA Directory listing other individuals is expected to be available in 2020.

BA case: test for approving settlement by trustees

The High Court has provided guidance on the test for determining whether the court will approve a decision by pension scheme trustees to settle litigation: [Airways Pension Scheme Trustee v Fielder](#).

The decision was made in the context of the long-running litigation about discretionary increases in a British Airways pension scheme (see [WNTW](#), 21 January 2019). The Trustee applied to the High Court for approval of the decision to enter into a settlement agreement. Previous court orders stated that the Trustee's costs should be paid out of the scheme assets. The representative beneficiary argued that, where the court has previously authorised the payment of litigation costs out of the trust, the court is required to reach its own view as to whether the settlement agreement as a whole is in the best interests of the scheme.

Mr Justice Zacaroli rejected this argument. When considering whether to approve a decision to settle the dispute, the court will apply the usual 'rationality' test. A different test does not apply where the court has previously authorised the payment of costs out of scheme assets.

ICO guidance on special category data

The Information Commissioner's Office (ICO) has published new, more detailed [guidance](#) on special category data and has also updated the existing [overview](#). The overview now includes a checklist of matters to consider, including whether a data protection impact assessment is required, and whether the associated risks affect other data protection obligations.

The detailed guidance contains additional information on these considerations, as well as guidance on the employment, social security and social protection condition, on which pension schemes typically rely for processing sensitive data. It confirms that this condition covers processing that is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law in connection with invalidity or disability, old age, and death and survivorship. The guidance also notes that the legal obligation or right in question must be identifiable by reference to a specific legal provision (or guidance). When relying on this condition, the controller must have an appropriate policy document in place – a [template version](#) of this document is now available.

Employment tribunal guidance on pension loss

The [guidance](#) used by Employment Tribunals to calculate compensation for pension loss has been updated to reflect changes to the discount rate and longevity factors, among other issues. It also updates the methodology and examples on grossing-up awards over more than one tax band.

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